LETTERS

Concerning scientific exhibits at American Medical Association San Francisco session in 1938.

AMERICAN MEDICAL ASSOCIATION
SCIENTIFIC EXHIBIT

Chicago, Illinois, November 6, 1937.

To the Editor:—Will you kindly print the enclosed notice concerning the scientific exhibit of the American Medical Association in one of the early numbers of CALIFORNIA AND WESTERN MEDICINE—preferably December?

535 North Dearborn Street.

Sincerely yours,
THOMAS G. HULL,
Director, Scientific Exhibit.

* * *

Application blanks are now available for space in the Scientific Exhibit at the San Francisco session of the American Medical Association, June 13 to 17, 1938. The Committee on Scientific Exhibit requires that all applicants fill out the regular forms.

Application blanks may be obtained from the Director, Scientific Exhibit, American Medical Association, 535 North Dearborn Street, Chicago, Illinois.

Concerning nonprofit hospitals: Chapter 882, California Statutes of 1937.

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STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH

San Francisco, November 8, 1937.

To the Editor:—Enclosed find copy of opinion rendered by the Attorney-General's office, in reference to nonprofit hospitals.

313 State Building.

Very truly yours,
W. M. DICKIE,
Director of Public Health.

* * *

(Copy)

STATE OF CALIFORNIA
LEGAL DEPARTMENT

U. S. Webb
Attorney-General

San Francisco, September 25, 1937.

Hon. Walter M. Dickie, M.D.
Director, Department of Public Health
313 State Building
San Francisco, California

Dear Sir:

In your communication of the 15th instant you submit rules and regulations adopted pursuant to Chapter 386, Statutes of 1935, and ask that the same be modified to accord with Chapter 882, Statutes of 1937, which latter statute repealed the former.

Section 11501 of Chapter 882 provides no certificate of approval may be issued to either a corporation—nonprofit—or a hospital, unless the hospital is possessed of "adequate physical facilities, mechanical equipment, and personnel for the study, diagnosis, treatment and care of patients."

By Section 11503, the State Department of Public Health has the right and power to investigate, regulate, and enforce the hospital standards set forth in Sections 11501 and 11502.

Thus the power to regulate (to adjust or control by rule, method or established mode; to direct by rule or restriction: Webster's New International Dictionary) includes the right to adopt regulations consistent with the limitations expressed in the granting clause and is specifically vested with the Department of Public Health.

You are hence advised that the following regulations submitted by you, properly come within the purview of the expressions enumerated in Sections 11501 and 11502 of Chapter 882, Statutes 1937.

1. A modern physical plant, properly equipped for the comfort and scientific care of the patient.
2. Clearly stated constitution, by-laws, rules and regulations setting forth organization, duties, responsibilities, and relations.
3. A carefully selected governing body having complete and supreme authority for the management of the institution.
4. A competent, well-trained executive officer or superintendent with authority and responsibility to carry out the policies of the institution as authorized by the governing body.
5. An adequate number of efficient personnel, properly organized and under competent supervision.
6. An organized healing-art staff of ethical, competent physicians for the carrying out of the professional policies of the hospital, subject to the approval of the governing body.
7. Adequate diagnostic and therapeutic facilities with efficient technical service under competent healing-art supervision.
8. Accurate and complete clinical records filed in an accessible manner so as to be available for study, reference, follow-up, and research.
9. Group conferences of the administrative staff and of the healing-art staff to review regularly and thoroughly their respective activities in order to keep the service and the scientific work on the highest plane of efficiency.
10. A humanitarian spirit in which the best care of the patient is always the primary consideration.

However, the duty and obligation of passing upon whether a given hospital measures up to the standards prescribed by Section 11501, rests in each case with the State Department of Public Health. This duty does not commence until after the inspection of the hospital making application to render hospital services under the hospital service plan.

Regulations adopted pursuant to Chapter 882 cannot deprive applicants of their right to a positive or negative finding upon the facts of each particular case.

Very truly yours,
U. S. WEBB, *Attorney-General.*
(Signed) By Lionel Browne, *Deputy.*

Concerning clinical laboratory technologists and technicians.

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH

San Francisco, November 8, 1937.

To the Editor:—Enclosed find copy of opinion rendered by the Attorney-General's office on Chapter 804, Statutes of 1937, governing clinical laboratories.

313 State Building.

Very truly yours,
W. M. DICKIE,
Director of Public Health.

* * *

(Copy)

STATE OF CALIFORNIA
LEGAL DEPARTMENT

San Francisco, November 5, 1937.

Hon. Walter M. Dickie, M.D.
Director of Public Health
313 State Building
San Francisco, California

Dear Sir:

In your communication of September 7th, you ask whether the new Clinical Laboratory Bill, being Chapter 804, Statutes 1937, and which is, in effect, a revision of the Clinical Laboratory Bill of 1935, heretofore declared by this office to be unconstitutional, is constitutional.

In reply thereto, permit me to state I have examined the bill in question and find it to be constitutional.

To reach this conclusion, a review of the Act is required. The chapter referred to went into effect on the twenty-seventh day of August, 1937, and is operative as to clinical laboratory technologists and technicians who are granted certificates without examination because of time spent in actively doing the work required by Sections 3 and 4 for the period prescribed for securing the respective licenses. The penal provisions of the Act, however, are not effective until January 1, 1938. Thereafter, according to Section 1, no person, firm, association or corporation may conduct,

maintain or operate a clinical laboratory as defined in said Act unless such laboratory be under the immediate supervision and direction of a licensed clinical laboratory technologist or a person holding a valid and unrevoked physician's and surgeon's certificate issued under the provisions of the State Medical Practice Act of this State; thereafter, according to the same section, no person may lawfully make any test or examination requiring the application of the fundamental sciences, such as bacteriology, biochemistry, serology or parasitology, unless said person possesses an unrevoked certificate issued by the State Board of Public Health as a qualified technician in the subject or subjects concerned with the test or examination, or possesses an unrevoked certificate as a clinical laboratory technologist, or is the holder of a valid and unrevoked physician's and surgeon's certificate, issued under the provisions of the State Medical Practice Act of this State.

Pursuant to the section above referred to, the State Board of Public Health has authority, by regulation, to provide for the exemption of one or more technicians in each laboratory, who shall be called apprentices.

Section 2 defines a clinical laboratory as follows:

> Any place, establishment or institution organized and operated for the practical application of one or more of the fundamental sciences by the use of specialized apparatus, equipment and methods for the purpose of obtaining scientific data which may be used as an aid to ascertain the presence, progress and source of disease.

Section 3 provides for the issuance of a certificate of licensure as clinical laboratory technologist to each person holding a degree in one or more of the fundamental sciences, issued by a *recognized* institution, who is found by the Board to be *properly qualified,* after written, oral or practical examination, conducted under such rules and regulations as the Board may from time to time promulgate. The section referred to does not define a recognized institution, and hence is so vague and uncertain that the portion thereof relating to the holding of a degree from a recognized institution is ineffectual for any purpose. The legislature has failed to prescribe what body must recognize the institution or upon what basis institutions should or should not be recognized. To read into the portion of said section referred to a requirement that such institution should be subject to recognition by the State Board of Public Health is not warranted by the context and would constitute at least quasi judicial legislation. On the other hand, principles of statutory construction do not permit an interpretation based upon a delegation of legislative authority unless the legislature prescribes that an administrative tribunal may adopt rules or regulations relating to technical, health or medical subjects, and leaves the enforcement thereof to technical or trained boards or persons. In no instance is there any reported case indicating that such delegation is proper where a method for measurement is not supplied in the legislation for the administrative officer or tribunal.

It is the view of this office, however, that the legislature did not intend that the entire Act fall because of its use of the ineffectual expression "recognized institution," but rather meant the act to stand, provided persons could be found who were properly qualified to secure a certificate of licensure, after examination as clinical laboratory technologists. By eliminating the requirement for the holding of a degree in a recognized institution and permitting all applicants after the first day of January, 1938, to take examinations for certificate of licensure as clinical laboratory technologists, the Act, practically in its entirety, may be given effect. Elimination of the requirement as to the holding of a degree is permitted because of the legislative expression in Section 11 of said Act that should any portion of the Act be unconstitutional, it would have passed the remainder thereof irrespective of such unconstitutional features.

The latter part of Section 3 provides for the granting of licensure as clinical laboratory technologist without examination to those having the qualifications therein prescribed, who make application to the Board before January 1, 1938, and who pay the required fee. This so-called blanketing in of those persons practicing as clinical laboratory technologists is not subject to constitutional objection.

Section 4 is practically identical to Section 3, except that such section has no requirement concerning the length of time one must be engaged in technical work in a clinical laboratory before one might be permitted to take either written or practical examinations for certificate as technician.

Section 5 is the penal section of said Act, and prohibits, after January 1, 1938, persons not certificated as technologists or technicians to thereafter act as such. It likewise prohibits persons, firms, associations or corporations from employing technicians, except that they be certificated as provided for in said Act or are acting as apprentices as provided for in regulations to be adopted or enacted by the State Board of Public Health. This would indicate a legislative intention to leave to the State Board of Public Health the right to enact regulations not contrary to the provisions of the law itself. Such regulations must, therefore, because of the latter portion of Section 1 of said Act and the provisions of Section 5, prohibit apprentices from working or being employed in a clinical laboratory unless there are on the active laboratory staff one or more licensed clinical laboratory technicians. They may not authorize more than two apprentices to work or be employed at the same time in the same laboratory.

The last portion of Section 5 permits the State Board of Health to provide for the issuance of temporary certificates as technologists and technicians, to expire at such time as shall be sufficient to determine the qualifications of said persons for permanent certification, notwithstanding the other provisions of the Act.

Section 6 of the said Act provides as follows:

> None of the provisions of this Act shall apply to a clinical laboratory now operated or hereafter to be operated by nonprofit hospitals, by nonprofit hospital associations, or by any nonprofit hospital department which is chiefly maintained by dues or contributions from employees of a common employer or of a group of affiliated employers, the services of which are principally confined to such employees, their dependents and members of their families and persons disabled in or by reason of the operations of the employer or group of employers, or by the State of California or the United States of America, or any department, official or agency thereof, or to nonprofit foundations engaged in research work.

It is definitely the view of this office that all of the attempted exemptions in said section contained are unconstitutional, with the exception of the exemptions as to clinical laboratories now operated or hereafter to be operated by the State of California, or by the United States of America, or any department, official or agency thereof.

We know of no sound reason which would warrant exempting clinical laboratories of nonprofit hospitals, nonprofit hospital associations, etc., from the operation of the Act, as the purpose of the Act is to protect the public from incompetent or inefficient technologists, technicians and apprentices, and such protection could not be secured by exempting nonprofit hospitals, nonprofit hospital associations, etc., from the provisions of the Act and permitting them to employ technologists, technicians, and apprentices having lesser qualifications.

On the other hand, it would appear that the legislature had the right to exempt the State of California and any department, official or agency thereof, from the operation of the Act, for ordinarily qualifying acts do not apply to the State unless the State is specifically included therein. Indeed, in the situation under consideration, the legislature has gone further than is customary and has specifically excluded the State and its departments, officials or agencies from the operative effect of the Act.

The exemption of the United States of America is likewise warranted in that the State of California has no authority to interfere with any federal agency acting within the scope of its federal authority. See *Ex parte Wilman,* 277 Fed. 819, and *Dobbins* vs. *Commissioner,* 16 Peters 435. Although these cases relate to taxation, the principle therein expressed is applicable to the exemption.

This does not necessarily mean that if the attempted exemptions are eliminated from the Act that the entire Act is invalid. Indeed, it is settled law that if an attempted exemption is invalid and separable, the balance of the Act stands. Particularly is this the case where the Act itself indicates that the legislature would have adopted the statute with the invalid exemption omitted.

The rule is set forth in the case of *Bacon Service Corporation* vs. *Huss,* 199 Cal. 21, and at page 39 the Court said:

Respondent relies on a statement in Lewis' Sutherland on Statutory Construction (Vol. 1, 2d ed., Sec. 306), where it is said: "If, by striking out a void exception, proviso or other restrictive clause, the remainder, by reason of its generality, will have a broader scope as to subject or territory, its operation is not in accord with the legislative intent, and the whole would be affected and made void by the invalidity of such part." The foregoing is unquestionably the rule except when a contrary legislative intent is ascertainable from the language of the statute or the general purposes or terms of the Act. But when it appears in the statute that it was the intent that the separable void portion should not destroy the whole the invalidity of the entire statute will not necessarily result, especially when it is determined, as here, that such was the intent, and that the remainder is a full and complete legislative enactment of the subject to which it relates.

To the same general effect see *State* vs. *Skinner* (Ala.), 101 So. 327.

Section 11 of the Act under consideration indicates a legislative intention to pass the Act should any section, subsection, subdivision, sentence, clause or phrase thereof, be declared unconstitutional. This leaves in force the balance of the Act, save as to the recognized exempted official agencies, and makes every technologist, technician, nonprofit hospital, nonprofit hospital association, etc., comply therewith.

Under Section 8, the State Board of Public Health is authorized to make rules and regulations providing for the reinstatement of technologists and technicians who fail to pay the fees required by the Board within sixty days after the commencement of the year.

Such section likewise provides for a revocation of certificate "for good cause after hearing on notice."

The portion of said section providing for the reinstatement of the certificate is constitutional and proper. That portion, however, providing for the revocation of license for good cause is void. In *Howitt* vs. *State Board of Medical Examiners,* 148 Cal. 590, the legislature undertook to permit the revocation of medical licensure by the Board of Medical Examiners in instances where the defendant made "grossly improper statements" in advertising a medical business. In discussing the language used in the statute, the Supreme Court of this State said:

Taking a given advertisement by a physician, the members of one board might conclude that it contained "grossly improper statements" while another board might reach an entirely opposite conclusion. One might conclude that the statement while "improper" was not "grossly" so. The advertisement of a physician which one board had determined did not come within the inhibition of the rule according to its judgment, a succeeding board might conclude it did. As the provision of the Act in question does not define what shall constitute "grossly improper statements" but leaves it to be determined according to the opinions of the particular members of the board who happened to constitute it when the matter of revoking a physician's license therefor is before them, it is obvious, if such a provision can be sustained that it could operate disastrously not only upon individual physicians, but upon physicians of a particular school.

The case in effect holds that a license may not be revoked where the grounds of revocation are left to the whim or caprice of an examining board without any standard for their guidance. The language in said case is applicable to the proviso of revocation in this Act "for good cause." What might constitute "good cause" as to one board might not constitute "good cause" as to another.

But this does not mean that the Act is unconstitutional because a license issued pursuant thereto may not be revoked or suspended pursuant to the Act in its present form. What has been stated hereinbefore with reference to *Bacon Service Corporation* vs. *Huss,* is applicable to the revocation language of the Act. The Act is, therefore, constitutional, but a license issued pursuant thereto may not be revoked. The advisability of an amendment to provide specific grounds for revocation is respectfully left to your discretion.

In conclusion, I particularly call to your attention the language of Section 10 of Chapter 804, which prohibits corporations and persons not possessing valid and unrevoked physicians' and surgeons' certificates from practicing medicine and surgery or from furnishing the service of physicians for the practice of medicine and surgery. This language indicates a specific legislative intent to prevent persons licensed as technologists or technicians from making diagnoses. Persons so licensed may make findings as to particular bacteria, germs or chemical substances present in given specimens or samples, but may not, under the law, state that the presence thereof constitutes the presence or absence of any particular malady or disease.

Very truly yours,
U. S. WEBB, *Attorney-General.*
(Signed) By Lionel Browne, *Deputy.*

Concerning a letter sent out from California*

(COPY)

EUGENE S. KILGORE, M.D.
ALSON R. KILGORE, M.D.
CURTIS E. SMITH, M.D.
490 POST STREET
San Francisco, November 11, 1937.

Dr. ————
Addressed
Dear Doctor:

Drs. Elliott C. Cutler, George Dock, Haven Emerson, Noble Wiley Jones and I join in inviting you to read the enclosed declaration in the hope that it expresses your feelings sufficiently well for you to want to sign and return one copy. As one of those invited to contribute to "American Medicine," the report of the American Foundation, you have undoubtedly been impressed by the multiplicity of views on various details covered in that report and by the publicity, the discussions, and the proposals which have followed its publication. We feel very strongly that from among these debated details there should be separated certain fundamentals on which most of us who were asked to contribute to "American Medicine" can agree, and that our agreement should be a matter of record at this time.

We have no immediate plans for publication; but unless you indicate the contrary we shall, of course, assume that you authorize the publication of your name with those of other signers if publication should later seem desirable.

Yours very truly,
(Signed) E. S. KILGORE, M.D.

* * *

(ENCLOSURE)

To Whom It May Interest:

In connection with certain recent proposals for increased governmental participation in matters pertaining to the prevention and cure of disease, we, the undersigned, declare the following to be our convictions on certain points which we believe are pertinent, important and fundamental:

1. That, while the health of the people is a concern of government, the intervention of government should consist chiefly in promoting the security of the people in the enjoyment of health opportunities, should involve the minimum complexity and size of the government agencies, and should preserve the maximum individual freedom and private initiative consistent with this aim;

2. That, in conformity with this principle,

(*a*) Government agencies for ensuring the sanitary safety of water, milk and other supplies, for quarantine, for enforcing honesty in labeling and advertising foods and drugs, for medical licensure and the like, should be maintained and in certain cases strengthened; and

(*b*) Recognizing the need of medical service distribution for low income groups, government should regard with sympathetic approval and, where necessary, aid by enabling legislation certain programs of insurance for medical care in sickness now functioning and others contemplated by many units of organized medicine in this country; and, mindful of the medical profession's ageless and fruitful tradition of self-sacrificing service and of the American people's stake in personal freedom, government should refrain from competing in or monopolizing the field of insurance medicine and from compulsion of physicians in offering or of the people in accepting such insurance;

3. That the preservation and advance of standards in medical education, medical practice and medical research

* Reference to this letter is made in the statement of the Board of Trustees of the American Medical Association, which appears in this issue, on page 366.